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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,700	12/29/2000	Anthony Edward Stuart	PU000189	9409

7590 09/21/2005

Joseph S. Tripoli
THOMSON multimedia Licensing Inc.
Patent Operations
Two Independence Way, P.O. Box 5312
Princeton, NJ 08543-5312

EXAMINER

MA, JOHNNY

ART UNIT	PAPER NUMBER
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2617

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/752,700

Applicant(s)

STUART, ANTHONY EDWARD

Examiner

Johnny Ma

Art Unit

2617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 02 September 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Please see attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).
13. ☐ Other: _____.


**VIVEK SRIVASTAVA
PRIMARY EXAMINER**

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 9/2/2005 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, in the knowledge generally available to one of ordinary skill in the art. As discussed in the previous Office Action, the examiner submitted that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Finseth et al. time line delineating days with the Rector, JR. et al. timeline delineating times for the purpose of providing a time line to a user for convenient selection of time and day information for display. The Examiner agrees that "Finseth in FIG. 4 discloses that the electronic program guide (EPG) provides day indicators 104 for indicating the day for which program information is presently being displayed...and a time button 102 for allowing users to skip to program information for a different time than that present displayed." However, the Examiner respectfully disagrees that "[s]ince Finseth has already provide the capability of selecting a future day and time, there is no need to incorporate the feature of using scroll buttons 80 and 82 and the positioning button 84 shown in FIG. 3 of Rector for selecting the various time slots in a grid." The combination of

Art Unit: 2617

Finseth and Rector, Jr. would result in the advantage that the user would not have to resort to advancing to a desired day and time in the future in two steps. Instead, the user would be able to conveniently navigate to different time periods and days via the Finseth timeline 104.

Furthermore, the Examiner respectfully submits that the fact that Finseth et al. already discloses a method of advancing through time and days does not preclude an additional means for time/day advancement. For example, the Windows Operating System provides multiple methods for accessing programs (i.e. start menu, desktop icons, and launch bar).

Applicant further argues that “even if the two reference are combined as suggested in the Office Action, the combination still does not arrive at claim 1. This is because two different buttons are required for selecting a day and a time slot in Finseth. Replacing the time button 102 in Finseth with the time positioning buttons 84 in Rector would produce two time lines: one for day and the other for time, each having its own marker.” However, the examiner respectfully submits that Applicant has mischaracterized the Finseth and Rector combination. As stated in the previous Office Action, “it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Finseth et al. time line delineating days with the Rector, JR. et al. timeline delineating times. Thus, the combination would modify the Finseth et al. time line delineating days to include time, resulting in a timeline with a finer degree of granularity.

In response to applicant's argument that “there is no motivation to combine the two time lines for the following reasons. Assuming a half hour interval for the program guide, there will be a total of 48 time slots in a day. In a week, there will be a total of 7X48 (336) time slots. Thus, the combination would produce 336 positioning buttons, which would be difficult if not

Art Unit: 2617

impossible to fit in a screen,” the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

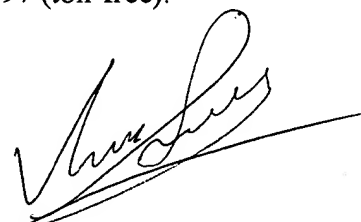
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johnny Ma whose telephone number is (571) 272-7351. The examiner can normally be reached on 8:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jm



VIVEK SRIVASTAVA
PRIMARY EXAMINER